

Housing and Property Chamber

First-tier Tribunal for Scotland



**First-tier tribunal for Scotland (Housing and Property Chamber)
("the tribunal")**

**Decision on homeowners' application: Property Factors (Scotland) Act 2011
("the 2011 Act"), Section 19(1)**

Chamber Ref: FTS/HPC/PF/19/3983

**Flat 1/1, 44 Pendeen Crescent, Glasgow, G33 4TL
("The Property")**

The Parties:-

**Mrs Lorraine Todd, Flat 1/1, 44 Pendeen Crescent, Glasgow, G33 4TL
("the Applicant")**

**Cumming, Turner and Watt, 40 Carlton Place, Glasgow, G5 9TS
("the Respondent")**

Tribunal Members:

Ms. Susanne L M Tanner Q.C. (Legal Member)

Mr. Kingsley Bruce (Ordinary Member)

DECISION

- 1. The Respondent has failed to comply with the Code of Conduct, Sections 2.5 and 6.1.**
- 2. The Respondent has not failed to comply with the Code of Conduct, Sections 7.1 and 7.2.**
- 3. The Respondent has failed to carry out its property factor's duties.**
- 4. The decision of the tribunal is unanimous.**

STATEMENT OF REASONS

1. In this decision the tribunal refers to the Property Factors (Scotland) Act 2011 as “the 2011 Act”, the Code of Conduct for Property Factors as “the Code of Conduct” and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as “the 2017 Rules”.

2. Findings in fact

- 2.1. The Applicant has been the joint registered proprietor of the Property at Flat 1/1, 44 Pendeen Crescent, Glasgow, G33 4TL (“the Property”) since 28 July 2010.
- 2.2. The Respondent registered as a property factor on 7 December 2012 and renewed its registration on 30 August 2016.
- 2.3. The Respondent is the property factor for the common property in the development in which the Property is situated (“the Development”).
- 2.4. The Respondent’s Written Statement of Services for the Development (“WSS”) is undated.
- 2.5. The WSS provides under the heading “Repairs and Maintenance”, that “CTW must be notified promptly by the co-proprietors of any common property requiring maintenance and repair”; and that “the relevant tradesmen will be instructed immediately to investigate and report”.
- 2.6. The WSS further provides under the heading “Repairs and Maintenance” that “Emergency Repairs will be dealt with within 24 hours; Minor Repairs will be dealt with within two weeks and Major Repairs will be instructed once full agreement and payment has been received by the co-proprietors at the property”.
- 2.7. There is no definition of “Emergency repairs”, “Minor repairs”, or “Major repairs” in the WSS.
- 2.8. The WSS provides under the heading “Enquiries” that “all enquiries will be dealt with as quickly as possible” but does not contain response times for enquiries.
- 2.9. The WSS provides details of the Respondent’s complaints’ procedure.

- 2.10.** The WSS provides under the heading “Complaints” that “complaints are dealt with timeously” and that complaints will be “acknowledged within seven working days of receipt to allow for proper investigation”.
- 2.11.** In or about early September 2019, the Applicant notified the Respondent by telephone that there was a leak apparently emanating from a drain in the common property at the Development which was causing water to flow onto the public highway.
- 2.12.** The Respondent did not timeously instruct repair work with the appropriate contractor.
- 2.13.** The leak persisted and the Applicant made two further telephone calls to the Respondent in September 2019 concerning the problem.
- 2.14.** The Applicant also contacted Scottish Water to request advice and she was told that as the leak was within the boundary of the common property at the Development, it was a matter she would require to pursue with the Respondent as the property factor.
- 2.15.** The Applicant sent emails to the Respondent on 25 September 2019, 2 October 2019 and a letter of 28 October 2019 in relation to the said leak.
- 2.16.** The letter of 28 October 2019 was sent by email, fax and mail.
- 2.17.** Within the Applicant’s letter of 28 October 2019 she requested a copy of the WSS.
- 2.18.** Within the Applicant’s letter of 28 October 2019 she made a complaint and requested a copy of the Respondents’ complaints’ procedure.
- 2.19.** The Respondent did not reply to the Applicant’s emails of 25 September or 2 October 2019.
- 2.20.** The Respondent did not reply to the Applicant’s letter of 28 October 2019 until 12 March 2020, as part of the tribunal process.
- 2.21.** The Respondent did not produce a copy of the WSS or the Complaints Procedure to the Applicant until the WSS was produced to the tribunal on 21 December 2020, as a consequence of directions issued by the tribunal.
- 2.22.** The Respondent did not acknowledge the Applicant’s complaint within seven days or commence the complaints process.

- 2.23.** The Respondent instructed an inspection of the drain on 28 October 2019 with C Hanlons.
- 2.24.** C Hanlons reported to the Respondent that emergency repairs were required.
- 2.25.** The Respondent instructed repair works to the drain later on 28 October 2019 and the repair was completed the same day.
- 2.26.** The Applicant made further telephone calls to the Respondent requesting information about progress and was told that an update would be provided.
- 2.27.** The Respondent did not inform the Applicant that the inspection had taken place or that the repair work had been completed, despite repeated requests by the Applicant for information about progress.
- 2.28.** In or about December 2019, the Respondent questioned the Applicant about why she wished to make a complaint when the repair work to the drain had been completed.
- 2.29.** In or about March 2020, the Applicant received a quarterly invoice which included a charge for her share of the repair work on the drain.
- 2.30.** On 12 March 2020, in the context of tribunal proceedings, the Respondent replied to the Applicant's letter of 28 October 2019. In the said letter the Respondent apologised for the communications failures and undertook to provide a better service moving forward. The Respondent also offered to credit the Applicant's account with one quarterly management fee of £31.20 plus VAT.
- 2.31.** The Respondent ultimately credited the Applicant's account with the sums of £31.20 plus VAT and £34 plus VAT as refund of management fees, in August and November 2019, in recognition of its admitted communication failures with the Applicant.

3. Findings in fact and law

- 3.1.** The Respondent's failures to reply to the Applicant's correspondence of 25 September, 2 October and 28 October 2019 until 12 March 2020 and 21 December 2020, when the WSS and complaints procedure were produced, are failures to comply with Section 2.5 of the Code of Conduct.

- 3.2. The Respondent's failure to provide any updates to the Applicant on the work instructed to repair the leaking drain is a failure to comply with Section 6.1 of the Code of Conduct.
- 3.3. The Respondent's failure to instruct works timeously once the issue was notified and failure to inform the Applicant of the progress of the works is a failure to comply with the property factor's duties arising from the WSS.
- 3.4. The Respondent's failure to provide details of the complaints procedure and to acknowledge the Applicant's complaint within seven working days in order that matters could be investigated is a failure to comply with property factor's duties arising from the WSS.

4. The Application

- 4.1. The Applicant lodged an application ("the Application") with the tribunal on 11 December 2019.
- 4.2. In Section 7A of the Application the Applicant alleged that the Respondent has failed to comply with the Code in the following respects:
 - 4.2.1. *Section 2.5;*
 - 4.2.2. *Section 6.1; and*
 - 4.2.3. *Sections 7.1 and 7.2.*
- 4.3. In Section 7B of the Application the Applicant alleged that the Property Factor has failed to comply with its Property Factor's duties for the following reasons: *"Factor failed to timeously instruct a repair to a leaking pipe. They also failed to confirm their complaints procedure, despite a written request and several follow up phone calls"*.
- 4.4. The Applicant completed the following four parts of Section 7 as follows:
 - 4.4.1. *What is your complaint? "Lengthy delay in carrying out a plumbing repair"*.
 - 4.4.2. *What are your reasons for considering that the Property Factor has failed to resolve the complaint? "I requested details of the Factor's complaints procedure, these have not yet been received some 6 weeks after my letter was faxed, emailed and posted. I have also telephoned a number of times requesting a response to my letter."*

4.4.3. *How has this affected you? “I have called the Factor on a number of occasions, liaised with Scottish Water on a matter the Factor should have been dealing with. The leak caused water to freeze on the pavement during sub zero temperatures”.*

4.4.4. *What would help to resolve the problem(s)? “I’d like the Factor to apologise, offer assurance that their service will improve and compensate me for my inconvenience”.*

4.5. The Applicant provided the following documents with her Application and in response to requests by the tribunal for further information:

4.5.1. Copy correspondence to the Respondent dated 28 October 2019;

4.5.2. Copy correspondence with the Respondent dated 24 December 2019;

4.5.3. Copies of notifications to the Respondent of alleged breaches of the Code of Conduct and property factors’ duties dated 8 January 2020.

4.6. On 18 February 2020, the Application, comprising all documentation received in the period 16 December 2019 and 30 January 2020, was referred to the tribunal in terms of Sections 18 and 18A of the 2011 Act.

4.7. On 26 February 2020, the tribunal’s administration wrote to the parties to advise that the Application had been referred to the tribunal. A hearing was fixed for 16 April 2020 at 10.00am at Glasgow Tribunals Centre, Room 112, 20 York Street, Glasgow, G2 8GT.

4.8. The hearing date was intimated to parties and parties were invited to lodge any written representations by 18 March 2020 and to lodge any documents in accordance with Practice Direction number 3.

4.9. The hearing was postponed as a result of the Covid-19 pandemic and resultant closure of the tribunal Chamber.

5. Written Representations and documents lodged by parties prior to the hearing

5.1. On 24 June 2020, the tribunal offices re-opened and a letter dated 12 March 2020 which was received on 18 March 2020 was forwarded to the tribunal members. The Respondent apologised for the matter not being resolved before the tribunal required to become involved. The Respondent noted the contents of the Applicant’s letter dated 28 October 2019 and stated that they had carried out an internal inquiry into the failure to answer the Applicant’s correspondence. The Respondent stated that they were under the impression that the Applicant was dealing with Scottish Water herself and once she had

details back from them the Respondent would carry out the works and invoice the owners directly. The Respondent further advised that C Hanlons had been instructed to carry out an inspection and that it was carried out on 28 October 2019. They stated that the contractor reported back on the same day and the contractor was advised to carry out the work as an emergency. The Respondent advised that the work was carried out on 28 October 2019 and provided photographic evidence. The Respondent further referred to an unrelated matter at the development in relation to a stop cock. The Respondent advised that all issues to do with water problems had now been rectified. The Respondent stated that it understood why the Applicant needed to contact the tribunal and understood the concerns she has with regard to communication from the Respondent. The Respondent stated that they will make sure that communication will be answered in a timeously (sic) manner in future not only with this property but with all properties that they manage. The Respondent stated that they would contact the Applicant and offer their deepest apologies on the matter. The Respondent confirmed that the management fee amounting to £39.00 had been deducted from her next common charge account.

6. Directions

- 6.1.** The tribunal on its own initiative issued Directions dated 1 July 2020 to parties in terms of Rule 16 of the 2017 Rules in relation to the conduct and progress of the Application. Reference is made to the full terms of the Directions.
- 6.2.** The Respondent failed to comply with the tribunal's Directions to produce specified documents no later than 10 July 2020 despite two further reminders being issued by the tribunal's administration.
- 6.3.** The tribunal had insufficient information to decide the matter without a hearing in terms of Rule 18 of the 2017 Rules. A hearing was fixed for 8 October 2020 and notified to parties on 3 September 2020.
- 6.4.** On 24 September 2020, "Robert" from the Respondent contacted the tribunal's administration and apologised for not responding to the tribunal's administration sooner. He stated that he was under the impression that the matter had been resolved. He stated that he had emailed the Applicant and apologised to her also. He enclosed a copy of an email sent to the Applicant dated 24 September 2020. Within that email he apologised for not getting back to the Applicant sooner. He stated that he had passed this over to someone else to deal with the common charge accounts reduction and that unfortunately this was not dealt with. He stated that he realised when he checked back the emails from the Applicant. He stated that he could confirm

that the accounts department had removed a charge for an unrelated matter (in relation to a stop cock). He stated that after speaking with Hanlons they advised that it would be common for them to investigate the issue of the water leak before they would consider excavation. He stated that as an apology he had advised the accounts department to credit the Applicant's account with a management fee. He stated that he hoped that this meets with the Applicant's approval and offered his apologies again.

6.5. On 1 October 2020, the tribunal enquired with the Applicant whether the matter had been resolved and whether she wished to withdraw her Application so that the hearing could be cancelled.

6.6. On 1 October 2020, the Applicant confirmed that she had recently received the response from the Respondent. She stated that this was in no way a response or resolution to her original complaint but was instead a reply to issues she raised in April 2020. She attached details in relation to that matter. She stated that it took a number of attempts for her to obtain a reply in relation to that other matter. She stated that had she not already made a complaint then it is likely that she would have made one based on the length of time it took to have the recent matter resolved. She stated that as the original complaint had not been dealt with, she would like the hearing to proceed.

6.7. On 7 October 2020, Robert Watt from the Respondent stated that he was sorry to hear that the tribunal would still take place and that the Applicant was not happy with the response that he supplied to her. He stated that obviously he would go along with any decision the tribunal make. He stated that he had taken some time off due to a family member having Covid-19 and that he was self-isolating at home for 14 days at that time. He stated that he could not access his office to provide the information requested by the tribunal.

7. First hearing – 8 October 2020

7.1. A hearing took place on 8 October 2020 at which neither party attended. The tribunal decided to dismiss the Application for the reasons stated in its decision of 8 October 2020.

8. Review of tribunal's decision to dismiss

8.1. The Applicant made a request that the tribunal review its decision dated 8 October 2020 to dismiss the Application. The tribunal, having considered the Applicant's request for review of the tribunal's decision to dismiss the

Application, and following further inquiries, determined that the tribunal would review the decision at its own instance, as it was necessary in the interests of justice to do so. The reasons for the review were provided in the tribunal's decision of 20 November 2020.

8.2. A new hearing was fixed for 7 January 2021 by teleconference and both parties were provided with dial in details.

9. Directions (2) and (3)

9.1. The tribunal issued Directions (2) and (3) dated 20 November 2020. Reference is made to the full terms of the Directions.

9.2. In response to the Directions the Applicant submitted a List of Documents and accompanying bundle of numbered documents.

9.3. The Respondent did not comply with the tribunal's Directions, despite a reminder being sent to the Respondent by the tribunal's administration.

9.4. On 21 December 2020, the Respondent sent an email to the tribunal with written representations and documents (un-numbered). The Respondent stated that it had not taken the action required in the tribunal's previous correspondence due to Covid-19 but did not provide any further explanation. Amongst the documents produced, the Respondent provided for the first time the Written Statement of Services for the Development (WSS). The Respondent advised that it had credited the Applicant's account with a further sum equivalent to the quarterly management fee and also produced copy quarterly invoices showing that the Applicant had been so credited on 27 August with the sum of £32.50 plus VAT management fee £6.50, totalling £39.00 (and £56.00 plus VAT for stop cock); and on 27 November 2019 with the sum of £34.00 plus VAT of £6.40, £40.40. The Respondent returned a form indicating that he did not wish to attend an oral hearing.

10. Hearing: 7 January 2021 by teleconference

10.1. The Applicant attended the hearing. The Respondent did not attend the hearing. The tribunal was satisfied that the Respondent had been notified of the hearing and did not wish to attend and the hearing proceeded in the absence of the Respondent.

10.2. The tribunal heard evidence and oral submissions on behalf of the Applicant in relation to the alleged failures to comply with the Code and

failures to comply with property factors' duties. The tribunal also took account of the Respondent's written submissions and documents lodged in advance of the hearing.

10.3. It was clear from the Respondent's written submissions that it admitted some communication failures with the Applicant. However, as the Respondent did not make any concessions or admissions relative to particular alleged failures to comply with the Code of Conduct or with property factors' duties, the tribunal proceeded to hear from the Applicant on all matters contained within her Application.

10.4. The parties' evidence and submissions in relation to the four alleged failures to comply with the Code of Conduct and the three alleged failures to comply with Property Factor's duties are summarised briefly below:

10.5. Section 2.5 of the Code of Conduct

10.6. Within the Application and notification the Applicant stated that the Respondent did not reply to her letter of 28 October 2019 nor her emails of 25 September and 2 October 2019.

10.7. The Applicant noted that she has now received the WSS which was supplied by the Respondent on 21 December 2020. She has considered its terms and within the WSS the Respondent does not give a timescale for a reply to an email or a letter. She would assume that an acceptable timescale would be an acknowledgement, with a reply within 7 to 14 days. She stated that she did not receive any response to the two emails or her letter. Within her letter of 28 October 2019 she asked for the WSS; and made a complaint and asked for the complaints' procedure. She did not receive the complaints procedure until the WSS was provided on 21 December 2020, 14 months after her request.

10.8. The Applicant stated that she did not receive a reply to any of her communications (documents number 2, number 3 and number 4 in her bundle). The first response did come but not until 12 March 2020 which was a letter to the tribunal. The Applicant appreciates that they finally have answered the points that I have raised. However, she submitted that it was a failure to comply with the Code because it is 4.5 months after my letter.

10.9. The Applicant accepted that the Respondent has apologised for communication failures. However, she was also seeking assurances that the service would improve. She stated that she is seeking additional compensation and stated that their service has not improved. They have not

been responding to my emails in relation to a later matter (in relation to a stop cock, from April until September 2020). She stated that she has emailed in relation to the other matter and their service has not improved. She emailed to ask for information about the repair to the stop cock. It took months. She stated that it does not relate to this complaint but that the service has not improved. She stated that she has continued to pay quarterly bills for a service she was not getting.

10.10. She stated that they have now given two credits of the quarterly charge in August and November 2019, for £31.20 and £34 +VAT, totalling £65.20 + VAT.

10.11. In relation to whether she had ever been provided with a copy of the WSS, the Applicant stated that she has been in the Property just over 10 years. She imagines that at some point she would have got a WSS but if she did it is not something that she held on to. In her letter of 28 October 2019 she asked for the WSS. She received it in December 2020 after the Respondent submitted it to the tribunal. She has since noted that there are no response times in the WSS.

10.12. She submitted that there are clear breaches of Section 2.5 of the Code of Conduct.

10.13. The tribunal noted that the Respondent, in its written representations and documents has accepted communications failures and has now credited the Applicant's account in the sum of £68.20 plus VAT as a "goodwill" gesture in respect of the same.

10.14. Section 6.1 of the Code of Conduct

10.15. The Applicant stated that the common drainage repair was not instructed when it was initially reported in September 2019, nor was she kept informed of progress after the contractor was appointed or the work was carried out.

10.16. The Applicant explained that in early September 2019, the Applicant had noticed a leak which was coming from an area near to the close entrance to the Property. There is a common path leading to the pavement. At the left hand side there is a garden area and a drain. She noticed that there was water trickling from there out and across the public pavement. It was not obvious where the water was coming from. It was difficult to determine whether the water was coming from. It appeared to be coming from that drain.

- 10.17.** The Applicant stated that she has very rarely needed a repair to be carried out by the Respondent. She called and told them details about it. She did not take a note of the date and time of my call at that time. It was not until after a few phone calls that she decided to start logging these calls. She called three times and the Respondent did not respond.
- 10.18.** Because it was not obvious where the water was coming from, she also contacted Scottish Water to find out if they could deal with the matter. She thought she was as well covering all of her bases.
- 10.19.** All of the Applicant's calls to the Respondent were before the first email that she sent on 25 September 2019. When she emailed them to say that she was dealing with Scottish Water she asked them to acknowledge her email. She did not get an acknowledgment.
- 10.20.** Scottish Water then came back to the Applicant and said it was within the boundary of the property so she would have to ask her factor to deal with the repair. She said to Scottish Water that she was having an issue getting a response from the factor. The gentleman from Scottish Water volunteered to call the factor himself and deal with them.
- 10.21.** The Applicant stated that the problem was caused by a leak from a drain. There was a separate stop cock issue which was reported later in December 2019 by the top floor owner.
- 10.22.** In relation to not being kept informed, the Applicant stated that she phoned the Respondent a few times looking for updates. She was not advised that the repair had been carried out. Given the Respondent's submissions she assumed that it was done on 28 October 2019. She called a few times for an update. From her initial call in September 2019, she was not kept advised. She called at one point and was told that the contractor had been out to investigate. She was not told that the job had been completed. She did not find out until March 2020 when they supplied information and photographs to the tribunal. She is delighted that the work was done but she is not happy that it took weeks from her first report in early September 2019. She stated that a charge appeared on her quarterly invoice in February 2020, which was received in March / April 2020. She paid it in full.
- 10.23. Section 7.1 of the Code of Conduct**
- 10.24.** The Applicant stated that she made a complaint and asked the Respondent for the Complaints Procedure on 28 October 2019. She had an

assumption that they did not have one which is why she made a complaint under Section 7.1. The Applicant accepted that now that she has received the WSS in December 2020, she can see that they have a complaints procedure.

10.25. From the time of her request on 28 October 2019 to the receipt of the WSS after it was lodged with the tribunal on 21 December 2020, she was unaware of the complaints' procedure.

10.26. In relation to the Section 7.1 allegation, the Applicant stated that she thinks that it was a fair complaint at the time because she was not able to see that they have a complaints procedure. Now she does see that they have a complaints procedure in place. She was not able to follow the complaints procedure because I did not know what it was.

10.27. Even though the WSS containing the procedure has been provided she has not had her complaint worked through the procedure.

10.28. Section 7.2 of the Code of Conduct

10.29. The Applicant stated that the later procedure could not be engaged because the Respondent had not provided the complaints procedure. The Respondent did not tell the Applicant that she could make a complaint to the tribunal. She stated that in one call in December 2019, after the work was done, she was asked why she was complaining when the repair had been done. She stated that that was not exactly what she expected to hear from the factor. The Applicant stated that she actually works in the factoring field. At one point she dealt with property management, before the Act came into effect. She is now in the finance side of it. She stated that knowing about property factor's duties made it all the more frustrating to not get replies.

10.30. The Applicant only knew about her right to make an application to the tribunal because of her previous work experience and not because the Respondent informed her.

10.31. Property Factor's duties (a)

10.32. The first alleged breach of duties was specified in the notification to the Respondent as "(a) Responding to communications. Telephone calls were not returned, emails were not responded to, the Applicant's letter of 28 October 2019 was not acknowledged, replied to."

10.33. The Applicant stated that she did not have the WSS at the time that she made the application to the tribunal as the Respondent had failed to provide it in response to her request of 28 October 2019. Now that she has been provided with and considered the terms of the WSS, the Applicant stated that there is nothing in the WSS in relation to timescales for response to enquiries. She had assumed that it would be there. The only issues for which the Respondent provides timescales are for response to repairs and acknowledgement of complaints. There is no timescale to reply to emails, calls and letters.

10.34. The Applicant acknowledged that it was difficult for her to insist on the allegation in the absence of being able to identify a duty in the WSS and she withdrew her complaint (a) at the hearing.

10.35. Property Factor's duties (b)

10.36. The second alleged breach of property factor's duties was in specified in the notification to the Respondent as: "Arranging repairs / maintenance timeously. Drainage issue was first raised by the Applicant in September 2019. As far as the Applicant knows the repair was complete in November 2019 but she still awaits details."

10.37. The Applicant stated that she has now considered the terms of the WSS in relation to repairs and maintenance. It provides that "Emergency repairs" will be dealt with within 24 hours and that "Minor repairs" will be dealt with within two weeks. In her view it was more than a minor repair; but even if it was a "Minor repair", the two weeks was also missed from her notification in early September 2019. She stated that it was a water leak. It was across the pavement and it froze in late October causing a hazard. There was no way of getting to her Property without walking on ice. Scottish Water did not say whether it was an urgent or an emergency repair when she notified them on 25 September 2019.

10.38. The Applicant stated that the Respondent has said that the repair was carried out on 28 October 2019. That was more than two weeks after Scottish Water said that it was within the boundary of the property on 11 October 2019. She contacted the Respondent that day and said it has now frozen over, it is now a slip hazard.

10.39. "Emergency repair", "Minor repair" and "Major repair" are not defined in the WSS.

10.40. The Applicant submitted that there was a failure to comply with the property factor's duty to deal with it within 24 hours of notification or within two weeks even it was a "Minor repair".

10.41. Property factor's duties (c)

10.42. The third alleged breach of property factor's duties was specified in the notification to the Respondent as: "Handling complaints. The Applicant was not provided with details of the complaints procedure when the same was requested. In fact, she was asked in her telephone call on 11 December [2019] why she wanted to complain as the repair was complete."

10.43. The Applicant stated that she has now considered the WSS. She dealt with Robert (Watt) at the Respondent. She sent her letter of 28 October 2019 by fax, by email and by post letting them know that she wished to make a complaint and she did not receive a response. They did not acknowledge within seven days of receipt, or at all. She phoned three, four or five times afterwards to say that she had not had a response. She asked for the WSS and none was ever forthcoming, until it was eventually provided in December 2020 during the tribunal process. The WSS contained the complaints procedure.

10.44. Remedies

10.45. The Applicant originally sought an apology from the Respondent; an assurance that their service would improve; and compensation for her inconvenience.

10.46. The Applicant stated that she accepted the Respondent had apologised, albeit that it appeared to relate to a later matter which she raised in April 2020 (in relation to the stop cock) rather than the original complaint.

10.47. The Applicant stated that this has taken a lot longer than necessary. She stated that if the Respondent had apologised at the time she would have been delighted.

10.48. The Applicant stated that although the Respondent offered an assurance in March 2020 that their service would improve, that it has not improved when she had to deal with them from April 2020 onwards in relation to a separate matter (in relation to a stop cock). She stated that she would like the Factor to communicate properly. She stated that she had spent a bit of time defending the factor to neighbours who do not appreciate the difficult

job that factors have to do. The Applicant stated that despite assurances the response times and service have not improved. She is happy with the garden and insurance. She has only needed to contact the Respondent a couple of times regarding repairs. She has been disappointed that they have not acknowledged emails and letters. She has religiously paid her bills. She stated that the fact that they still are not replying to her emails is not good. Given Covid-19, she has been more than happy to give some leeway. Her separate enquiries from April 2020 onwards were in relation to investigative work carried out by the contractor and she asked why that was necessary; and the stop cock repair and she asked them to clarify that. The Applicant asked why they needed to come back and she did not get a reply from the Respondent.

10.49. The Applicant stated that the Respondent should revise the WSS to put in a timescale for enquiries. It would make it easier to stop things from progressing to this level again. She stated that it would be useful to be able to quote something to them with regards to timescales.

10.50. In relation to compensation, the Applicant confirmed that the Respondent has now refunded two quarterly management fees amounting to £65 plus VAT. The Applicant is seeking compensation but she stated that she does not have a figure in mind that she wants the tribunal to consider for compensation.

11. Discussion

11.1. The tribunal's reasons for its decision are summarised as follows, with reference to each alleged failure to comply with the Code and alleged breach of property factor's duties:

11.2. Section 2.5

11.3. Section 2.5 provides: "You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement (Section 1 refers)."

11.4. The tribunal was satisfied that there was a failure on the part of the Respondent to respond within prompt timescales to the Applicant's: (i)

telephone calls; (ii) emails, (iii) letter containing request for written statement (iv) letter containing complaint and request for complaints procedure.

11.5. The Respondent also failed to provide the WSS and complaints procedure during the tribunal proceedings despite being directed to do so, until 21 December 2020, following a second and third set of Directions and two reminder emails from the tribunal's administration. Other than a general reference to Covid-19 in the email of 21 December 2020, no adequate explanation was provided for the failure to produce the documents in response to the tribunal's directions dated 1 July 2020 or later Directions issued in November 2020.

11.6. The Respondent has accepted that there were communication failures in its dealings with the Applicant and apologised for the same.

11.7. Having considered parties' evidence and submissions, the tribunal determined that the Respondent failed to comply with Section 2.5 of the Code of Conduct.

11.8. The tribunal observed that the response times for enquiries (whether by telephone, email or letter were not contained in the WSS as required in Section 1 of the Code of Conduct. This failure could form the basis of an additional complaint to the tribunal and the Respondent would be well advised to consider revision of the WSS to rectify this.

11.9. Section 6.1

11.10. Section 6.1 provides: **"You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion, unless you have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required."**

11.11. The tribunal was satisfied that the Respondent failed to inform the Applicant of the progress of repairs once those had been instructed and completed, despite the Applicant's enquiries and complaint.

11.12. The tribunal accepted on the evidence that the work was instructed and carried out as an inspection and then an emergency repair on 28 October 2019.

11.13. At the time of the Applicant's application to the tribunal on 11 December 2019 and notification to the Respondent on 8 January 2020 she was unaware that the work had been completed.

11.14. It was 6 months after her notification in September 2019 before she had any indication that the work had been completed, by receipt of the Feb/March quarterly invoice containing the charge and/or receipt of the Respondent's letter sent on 12 March 2020 in the tribunal process.

11.15. Having considered parties' evidence and submissions, the tribunal determined that the Respondent failed to comply with Section 6.1 of the Code of Conduct.

11.16. **Section 7.1**

11.17. **Section 7.1 provides: "You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors."**

11.18. Having considered the terms of the WSS which was produced on 21 December 2020, the tribunal was satisfied that there is a written complaints resolution procedure contained within that document.

11.19. On that basis, the tribunal determined that the Respondent did not fail to comply with Section 6.9 of the Code of Conduct.

11.20. However, despite the fact that the tribunal found that there was no breach of that Section of the Code of Conduct, the tribunal observed that the Applicant made a complaint and asked for the complaints' procedure on 28 October 2019. The Respondent completely failed to provide the complaints procedure when it was requested and it was first provided on 21 December 2020. The Respondent did not acknowledge the Applicant's complaint nor did it commence its own complaints procedure.

11.21. **Section 7.2**

11.22. Section 7.2 provides: "When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is

notified in writing. This letter should also provide details of how the homeowner may apply to the [homeowner housing panel] tribunal.”

11.23. For similar reasons to those outlined in relation to Section 7.1, above, the tribunal determined that the Respondent did not fail to comply with Section 7.2 of the Code of Conduct.

11.24. The tribunal found that there was no breach of Section 7.2 because the Respondent failed to provide the complaints procedure and did not acknowledge the complaint or start the complaints process. Additionally, the Respondent did not at any time provide details of how the Applicant might apply to the tribunal.

11.25. The tribunal also observes that the WSS is out of date in that it refers to the homeowner housing panel which has not existed since 2016 when its jurisdiction was transferred to the Housing and Property Chamber of the First-tier Tribunal.

Property Factor’s Duties

11.26. Property Factor’s duties (a)

11.27. This complaint was withdrawn during the hearing following consideration of the terms of the WSS which was not produced by the Respondent until 21 December 2020, because timescales for responding to enquiries are missing from the WSS, as noted above.

11.28. Property Factor’s duties (b)

11.29. The WSS provides under “Repairs and Maintenance” that when works are notified by homeowners, the relevant tradesmen will be instructed timeously to investigate and report and further provides the following timescales for repairs: “Emergency Repairs will be dealt with within 24 hours; Minor Repairs will be dealt with within two weeks and Major Repairs will be instructed once full agreement and payment has been received by the co-proprietors at the property”.

11.30. There is no definition of “Emergency repairs”, “Minor repairs”, or “Major repairs” work in the WSS.

11.31. The tribunal accepts that the leak was notified by the Applicant in early September 2019. On the evidence, it cannot be established that it was an

emergency at that time, but it would have been a “Minor repair” that should therefore have been dealt with within a maximum of two weeks. The repair was not instructed until 28 October 2019 despite further letters and emails. When the contractor attended on 28 October 2019 to inspect it was classed as an emergency repair and repair work was instructed and dealt with the same day.

11.32. There is no acceptable reason provided by the Respondent for its failure to meet its own timescales. The leak was notified in early September 2019 and the Applicant made repeated telephone contact before her first email on 25 September 2019. The tribunal does not accept that it is a defence for the Respondent to submit that they thought that the Applicant or Scottish Water was dealing with the matter. The Applicant went to Scottish Water in the absence of any action by the Factor in response to her notification and in order to cover all bases. That does not detract from the Respondent’s duties following notification which arise from the WSS. The Respondent should not have left the Applicant to conduct investigations with Scottish Water when they should have known or instructed their own investigations to find out whether the leak was emanating from common property. In any event, by 11 October 2019 the Respondent had been notified of Scottish Water’s position that it was common property and was therefore the responsibility of the Respondent to arrange repairs. The Respondent has provided not explanation for the delay thereafter until the point of instruction of an inspection on 28 October 2019.

11.33. Having considered parties’ evidence and submissions, the tribunal determined that the Respondent failed to comply with its property factor’s duty to meet the timescale of instructing a repair immediately with a relevant contractor, to be carried out within two weeks of notification of the “Minor repair”.

11.34. Property Factor’s duties (c)

11.35. The tribunal was satisfied that the Respondent had duties in terms of the WSS to acknowledge complaints within seven days and to deal with complaints timeously.

11.36. The tribunal was satisfied that the Respondent did not acknowledge the Applicant’s complaint within 7 days of receipt on 28 October 2019; nor was she provided with details of the complaints procedure when the same was requested. The Applicant made repeated telephone calls to follow up and the Respondent failed to respond or to provide the procedure. The Respondent did not commence the complaints procedure. In fact, the Applicant was asked by the Respondent in a telephone call in or about

December 2019 why she wanted to complain as the repair was complete. In the tribunal correspondence the Respondent repeated that position, apparently on the basis that the fact that the repair had been done negated the Applicant's need to complain about the alleged breaches which form the basis of the Application.

11.37. Having considered parties' evidence and submissions, the tribunal determined that the Respondent failed to comply with the property factor's duty to acknowledge the Applicant's complaint within seven days of receipt; or to deal with the Applicant's complaint timeously.

12. Property Factor Enforcement Order

12.1. The tribunal proposes to make a property factor enforcement order ("PFEO"). The terms of the proposed PFEO are set out in the attached Notice in terms of Section 19(2) of the 2011 Act.

12.2. The tribunal considered that a financial payment by the Respondent to the Applicant should be ordered in the sum of £425.00 as a cumulative amount in respect of all breaches by the Respondent of the Code of Conduct and property factor's duties and the Applicant's time and inconvenience in dealing with the matter over a significant period of time since notification of the leak in September 2019. While acknowledging that some of the delay in this matter proceeding to a hearing has arisen as a result of closure of the tribunal due to Covid-19, the Respondent failed to comply with three directions of the tribunal and did not produce the WSS, which contained the complaints procedure, until 21 December 2020. The sum specified also takes into account the fact that the Applicant has already received a credit in respect of two quarterly management fees amounting to £65.00 plus VAT. The sum should be paid in cleared funds to the Applicant rather than a credit on her factoring account.

12.3. The parties will be allowed to make representations on the proposed PFEO.

13. Appeals

13.1. A homeowner or property factor aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Ms. Susanne L M Tanner Q.C.
Legal Member
8 January 2021